



Jury Trials (Scotland) Act 1815

1815 CHAPTER 42 55 Geo 3

[[^{F1}1.] Court of Session empowered to direct issues.

It shall and may be lawful for either division of the Court of Session, in all cases that may be brought before them during the continuance of this Act wherein matters of fact are to be proved, to order and direct, by special interlocutor, such issues as may appear to them expedient for the due administration of justice to be sent to the said court, that such issues may be there tried by a jury in manner herein-after directed.]

Textual Amendments

F1 Ss. 1–19 repealed (S.) by [Court of Session Act 1988](#) (c. 36, SIF 36:1), s. 52(2), **Sch. 2 Pt. I** (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

2—4^{F2}

Textual Amendments

F2 Ss. 2—4, 10, 11, 13, 14, 18 repealed by [Statute Law Revision Act 1873](#) (c. 91)

5 Issues for reparation in pecuniary damages.

In all issues referred by the Court of Session to be tried by a jury in causes wherein the summons concludes for reparation by pecuniary damages, the jury, if they shall find a verdict for the pursuer, shall also assess the damages.

6 New trial how to be applied for.

In all cases in which an issue or issues shall have been directed to be tried by a jury, it shall be lawful and competent for the party who is dissatisfied with the verdict to apply to the division of the Court of Session which directed the issue for a new trial, on the ground of the verdict being contrary to evidence, on the ground of mis-direction

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of the judge, on the ground of the undue admission or rejection of evidence, on the ground of excess of damages, or of *res noviter veniens ad notitiam*, or for such other cause as is essential to the justice of the case:

[^{F3}Provided that if the court shall be of opinion that the only ground for granting a new trial is either excess of damages or such inadequacy of damages as to show that a new trial is essential to the justice of the cause, it may grant a new trial which shall be restricted to the question of the amount of damages only.]

F4
...

Textual Amendments

F3 Words added by [S.I. 1965/1169](#) para. 1

F4 Words repealed by [Administration of Justice \(Scotland\) Act 1972 \(c. 59\)](#), s. 2(1)(a)

7 Exception may be taken.

It shall be competent to the counsel for any party, at the trial of any issue or issues, to except to the opinion and direction of the judge or judges before whom the same shall be tried, either as to the competency of witnesses, the admissibility of evidence, or other matter of law arising at the trial, and, on such exception being taken, the same shall be put in writing by the counsel for the party objecting, and signed by the judge or judges; but notwithstanding the said exception the trial shall proceed, and the jury shall give a verdict therein for the pursuer or defender, and assess damages when necessary; and after the trial of every such issue or issues the judge who presided shall forthwith present the said exception, with the order or interlocutor directing such issue or issues and a copy of the verdict of the jury indorsed thereon, to the division by which the said issue or issues were directed, which division shall thereupon order the said exception to be heard in presence on or before the fourth sederunt day thereafter; and in case the said division shall allow the said exception, they shall direct another jury to be summoned for the trial of the said issue or issues, or if the exception shall be disallowed, the verdict shall be final and conclusive as herein-after mentioned: Provided always, that it shall be competent to the party against whom any interlocutor shall be pronounced on the matter of the exception to appeal from such interlocutor to the House of Lords, attaching a copy of the exception to the petition of appeal, certified by one of the clerks of session; so as such appeal shall be presented to the House of Lords within fourteen days after the interlocutor shall have been pronounced, if Parliament shall be then sitting, or if Parliament shall not be sitting, then within eight days after the commencement of the next session of Parliament, but not afterwards; and so as the proceedings on such appeal do conform in all respects to the rules and regulations established respecting appeals; and every such appeal shall be appointed to be heard on or before the fourth cause day after the time limited for laying the printed cases in such appeal upon the table of the House of Lords; and upon the hearing of such appeal the House of Lords shall give such judgment regarding the farther proceedings, either by directing a new trial to be had, or otherwise, as the case may require.

8 Judgment thereupon, or refusing a new trial not to be questioned.

If a new trial shall not be applied for, or shall be refused, or if the exception taken to the opinion and direction of the judge or judges shall be disallowed, the verdict shall be final and conclusive as to the fact or facts found by the jury, and shall be so

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taken and considered by the Court of Session or by the judge admiral respectively in pronouncing their judgment, and shall not be liable to be questioned anywhere.

9 Power of review of a judgment in point of law.

Provided always, that in all cases wherein the court shall pronounce a judgment in point of law, as applicable to or arising out of the finding by the verdict, it shall be lawful and competent for the party dissatisfied with the said judgment in point of law to bring the same under review, either by representation or reclaiming petition, or by appeal to the House of Lords, or where the judge admiral shall have pronounced judgment in point of law on the verdict, it shall be lawful and competent for the party or parties to bring the same under the review of the Court of Session as heretofore.

10, 11.^{F5}

Textual Amendments

F5 Ss. 2—4, 10, 11, 13, 14, 18 repealed by [Statute Law Revision Act 1873 \(c. 91\)](#)

12 Salaries to be paid.

It shall and may be lawful for his Majesty, to order and direct to be issued and paid in every year by quarterly payments out of the monies that shall arise from any of the duties and revenues in Scotland, which by the several Acts made in the seventh and tenth years of the reign of Queen Anne were made chargeable with the fees, salaries, and other charges allowed or to be allowed by her Majesty, for keeping up the courts of Session, Justiciary, and Exchequer in Scotland, the sum of seven thousand pounds; . . .^{F6} and . . .^{F6} the said sum of seven thousand pounds, or so much thereof as shall be certified by the chief commissioner to the Court of Exchequer to be requisite, shall be applied in defraying the expences attending the court and circuits; the application of which last-mentioned sum shall be accounted for in the Exchequer of Scotland.

Textual Amendments

F6 Words repealed by [Statute Law Revision Act 1873 \(c. 91\)](#)

13, 14.^{F7}

Textual Amendments

F7 Ss. 2—4, 10, 11, 13, 14, 18 repealed by [Statute Law Revision Act 1873 \(c. 91\)](#)

15 Where issues may be tried.

It shall and may be lawful to try such issues at Edinburgh in time of session; and also in time of vacation, at Edinburgh, and at such circuit towns as in the opinion of the said court of commissioners the circumstances of the case may require, at such time

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in the spring and autumn vacations immediately after such issue is directed as they shall appoint.

16 Attendance of witnesses.

It shall be lawful for the jury court to grant warrant for citing witnesses and havers, who shall attend and may be compelled to attend and be examined upon oath before the jury court when required, in the same manner that witnesses and havers do attend or may be compelled to attend for the purpose of examination upon oath by the Court of Session.

17 Verdicts, how to be returned.

After the trial of every such issue or issues the judge who presided shall forthwith make a return to the division or lord ordinary which directed the issue of the order or interlocutor directing such issue or issues, with a copy of the verdict of the jury indorsed thereon, certified by his signature to be a true copy; and the said presiding judge shall also, when required by such division, deliver to them a report in writing of the evidence adduced and given on the trial of such issue, as taken down by him at the time, and of the directions, if any, in point of law; and the said indorsed copy of the verdict and the report of the proceedings on such trial shall be conclusive of what passed on such trial: Provided always, that it shall be lawful for the said presiding judge to make such return directly to the judge admiral where the issue shall have been directed upon his report.

18 F8

Textual Amendments
F8 Ss. 2—4, 10, 11, 13, 14, 18 repealed by [Statute Law Revision Act 1873 \(c. 91\)](#)

19 House of Lords to direct issues.

It shall be lawful for the House of Lords, in remitting to the Court of Session any cause which is now or shall hereafter come before the said house by appeal from the said Court of Session, to instruct the division of the said Court of Session to which the cause is remitted to order and direct such issue or issues as the said House of Lords shall think fit to be transmitted to the said commissioners for the purpose of being tried by a jury in manner directed by this Act; subject nevertheless to such rules and regulations as are contained with respect to remits in the ^{M1}Court of Session Act 1808.

Marginal Citations
M1 [1808 c. 151.](#)

20 Common jury summons.

[^{F9}immediately upon receipt of the authority or precept issued under section 12 of the Court of Session Act 1988, the sheriff principal]or other officer or officers employed

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to return juries to the High Court of Justiciary shall make out a list containing the christian and surnames, additions, and places of abode of a competent number of persons qualified to serve as jurors, and shall return the said list [^{F10}to a clerk of] court, annexed to the said authority or precept, without delay, the names of the same persons being always inserted in the lists annexed to each authority or precept issued . . . ^{F11}in manner aforesaid; which number of jurors shall not be less than thirty-six in any [^{F12}sheriff court district] county, city, town or place nor more than fifty; and the persons named in the said lists shall be summoned to serve as jurors for the trial of such issues within the [^{F12}sheriff court district] named in such authorities or precepts respectively, and no others.

Textual Amendments

- F9** Words substituted (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(1), [Sch. 1 para. 1\(a\)](#)
- F10** Words substituted (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(1), [Sch. 1 para. 1\(b\)](#)
- F11** Words repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(1)(2), [Sch. 1 para. 1\(c\)](#), [Sch. 2 Pt. I](#)
- F12** Words substituted by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), [Sch. 27 Pt. II para. 1](#)

[^{F13}21] **Common jury ballot.**

. . . ^{F14} and the names of the persons so drawn and sworn shall be kept apart by themselves in some other box or glass to be kept for that purpose, till such jury shall have given in their verdict, and the same is recorded, or until the jury shall, by the consent of the parties or leave of the court, be discharged; and then the same names shall be rolled up again and returned to the former box or glass, there to be kept with the other names remaining at that time undrawn, and so toties quoties as long as any issue remains then to be tried: Provided always, that in challenging the jurors it shall be lawful for each party to have any four challenges allowed without assigning any cause, the challenges for cause assigned (if any) being first made respectively.]

Textual Amendments

- F13** [Ss. 21–41](#) repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt. I](#) (and re-enacted in part as referred to in [Sch. 2 Pt. II](#) of that Act)
- F14** Words repealed by [Statute Law Revision Act 1873 \(c. 91\)](#)

22 **Fines on jurors making default.**

Every person or persons whose name or names shall be so drawn as aforesaid, . . . ^{F15} and who shall not appear after being openly called three times, upon oath made by some credible person that such person so making default had been lawfully summoned, shall forfeit and pay for every default in not appearing upon call as aforesaid (unless some reasonable cause of his absence be proved by oath or affidavit to the satisfaction of the court or commissioner who sits to try the said issues) such fine or fines, not exceeding the sum of five pounds and not less than [^{F16}two pounds], as the court or commissioner shall think reasonable to inflict or assess for such default.

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Textual Amendments

- F15** Words repealed by [Juries Act 1949 \(c. 27\)](#), [Sch. 3](#)
- F16** Words substituted by virtue of [Decimal Currency Act 1969 \(c. 19\)](#), [s. 10\(1\)](#)

23 Jury to be sworn though former verdict not returned.

Provided always, that if the trial of any issue shall be brought on in the said jury court before the jury in any other issue shall have brought in their verdict or be discharged, it shall and may be lawful for the court to order twelve of the residue of the said parchments or papers, not containing the names of any of the jurors who shall not have so brought in their verdict, or be discharged, to be drawn in such manner as is aforesaid, for the trial of the issue which shall be so brought on to be tried.

24— ^{F17}
27.

Textual Amendments

- F17** [Ss. 24–27, 30](#) repealed by [Juries Act 1949 \(c. 27\)](#), [Sch. 3](#)

28 Tales.

Where a full jury shall not appear before the said jury court or elsewhere, after challenge by either of the parties, and the jury is like to remain untaken for default of jurors, it shall be lawful for the said court, or the commissioner before whom any issue is to be tried, to direct the [^{F18}sheriff principal] or other officer or officers who summoned the said jury, upon request made by either party, to add to the list of the said jury the name or names of such other person or persons of the county, city, town, or place where the issue is to be tried, who shall be inserted in some other list of the jurors, and who shall then be attending the court where such trial is to be had, to serve upon such jury, and not any others, if so many out of the said other list be present in court, or can there be found; and either of the parties, pursuer and defender, may have his challenge to the juror or jurors so named and added to the former original list, in such wise as if he or they had been originally included in the said list of jurors for the trial of such issue; and the said court or commissioner who sits to try such issue shall and may proceed to the trial thereof with those persons whose names were originally inserted in the said list of jurors, together with the person or persons whose names have been so added to the original list of jurors as aforesaid, in the same manner as the said court or commissioner might and ought to have done if all the said jurors whose names were inserted in the said original list had appeared to try such issue; and in case any person or persons so added to the said list of jurors as aforesaid, and who shall have been present at that time, shall be called and not appear, or after his or their appearance shall wilfully withdraw himself or themselves from the said service, then and in every such case the said jury court shall and may set a fine upon every such person making default or wilfully withdrawing himself, such fine not exceeding the sum of five pounds sterling, nor less than the sum of [^{F19}two pounds], as the said jury court shall think reasonable.

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Textual Amendments

- F18** Words substituted by virtue of [Sheriff Courts \(Scotland\) Act 1971 \(c. 58\), s. 4](#)
- F19** Words substituted by virtue of [Decimal Currency Act 1969 \(c. 19\), s. 10\(1\)](#)

29 View.

When it shall appear that it will be proper and necessary that the jurors who are to try such issues as aforesaid should have the view of the houses, lands, or places, in question, in order to their better understanding the evidence that will be given upon the trial of such issues, in every such case it shall be lawful for either division of the said Court of Session by the special interlocutor by which such issue is directed, or for the said jury court to order that a view should be allowed; and in every case where such view is allowed as aforesaid, six of the jurors named in the said list, . . . ^{F20} or more, who shall be mutually consented to by the parties or their agents on both sides, and if the parties cannot agree, six or more of the first twelve on the list of jurors returned by the [^{F21}sheriff principal], or other officer or officers as aforesaid, shall have the view, and shall be first sworn, or such of them as shall appear upon the jury to try the issue before any drawing as aforesaid, and so many only shall be drawn to be added to viewers who appear, as shall, after all defaulters and challenges allowed, to make up the number of twelve to be sworn for the trial of the said issue; and it shall and may be lawful for the said jury court, and they are hereby required, in every such case, by an authority or precept signed by the clerk of the jury court, to order and direct the [^{F21}sheriff principal] or officer or officers, who shall summon the jury for the trial of such issue, to have the said jurors, who shall be so selected or named to be viewers as aforesaid, at the place in question some convenient time before the trial of the said issue, who should then and there have the matters in question shewn to them by two persons named in the said summons, and appointed by the said jury court; and the said [^{F21}sheriff principal] or other officer or officers shall certify upon the said last-mentioned authority or precept, that the view hath been had according to the direction contained therein, and shall forthwith return the same to the said jury court: Provided always, that the expence of such view shall be equally borne by all parties, and that no evidence shall be given on either side at the time of taking thereof: Provided also, that in case no view shall be had, or if a view shall be had by any of the jurors contained in the said list, whether they shall happen to be any of the jurors who shall be selected or nominated as aforesaid, yet the trial of the said issue shall proceed, and no objection shall be made on, thereof, or for want of a proper certificate of the view having been taken as aforesaid.

Textual Amendments

- F20** Words repealed by [Juries Act 1949 \(c. 27\), Sch. 3](#)
- F21** Words substituted by virtue of [Sheriff Courts \(Scotland\) Act 1971 \(c. 58\), s. 4](#)

30 ^{F22}

Textual Amendments

- F22** [Ss. 24–27, 30](#) repealed by [Juries Act 1949 \(c. 27\), Sch. 3](#)

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31 Oath to be administered to the jury.

The clerk of the jury court, before proceeding to the said trial, shall administer to the jury the following oath; videlicet,

You swear by God, and as you shall answer to God at the great Day of Judgment, that you shall well and truly try (as the case may be), these issues, or this issue, and a true verdict give according to the evidence.

32 Other oaths how to be administered.

This and all other oaths necessary on the trial of such issues shall be administered in the manner and according to the form at present in use in the High Court of Justiciary.

33 Chancellor of the jury to be elected.

The chancellor or foreman of the jury shall be the juror chosen by the majority of the jurors after they shall be sworn, and in case of an equality of votes the juror first sworn shall have a double vote; and when the verdict is returned to the court, it shall be declared by the chancellor or foreman verbally in open court, and taken down by the clerk of the said jury court in writing before the jury is discharged, to be afterwards indorsed and certified on the written order or interlocutor of the Court of Session directing the issue.

34 F23

Textual Amendments
F23 S. 34 repealed by [Statute Law Revision Act 1873 \(c. 91\)](#)

35 F24

Textual Amendments
F24 S. 35 repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\), Sch.](#)

36— F25
38.

Textual Amendments
F25 Ss. 36–38 repealed by [Statute Law Revision Act 1873 \(c. 91\)](#)

39 Oaths to be administered to officers.

It shall and may be lawful for the said jury court to administer to the said officers and macers the usual oaths to his Majesty, and upon the trial of any issue or issues that

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may be directed under the authority of this Act, also to administer the oath de fideli to such officers and macers as shall attend upon the trial of such issue or issues.

40 F26

Textual Amendments

F26 S. 40 repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), [Sch.](#)

41 Jury court where to assemble.

The said jury court shall be entitled to assemble and meet for the purpose of trying any issue or issues to be directed as aforesaid at Edinburgh, in either of the rooms now appropriated to the first and second divisions of the Court of Session, or in the room used by the Court of Exchequer for jury trials, and at other places in the circuit courts of justiciary, the sheriff courts, or any other place suitable and proper, as circumstances and the convenience of those courts may admit; and proper apartments shall be allotted to the clerks of the jury court in the register office in the same manner as to the clerks of session, and at other places, as the lord clerk register shall order and direct.

42—45 F27

Textual Amendments

F27 Ss. 42–45 repealed by [Statute Law Revision Act 1873 \(c. 91\)](#)

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